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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

19 RENE PEINADO,) NO. C11-01799 EMC
20 Plaintiff,) **STIPULATED PROTECTIVE ORDER**
21 v.)
22 CITY AND COUNTY OF SAN)
FRANCISCO, et al.,)
23 Defendants.)
24 _____)

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
12 followed and the standards that will be applied when a party seeks permission from the court to
13 file material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
19 of Civil Procedure 26(c).2

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
21 well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that
23 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including, among other things,
26 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
27 responses to discovery in this matter.

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1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action.

4 2.7 House Counsel: attorneys who are employees of a party to this action. House
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
7 entity not named as a Party to this action.

8 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
9 action but are retained to represent or advise a party to this action and have appeared in this
10 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
11 that party.

12 2.10 Party: any party to this action, including all of its officers, directors, employees,
13 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

14 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
15 Material in this action.

16 2.12 Professional Vendors: persons or entities that provide litigation support services
17 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
18 organizing, storing, or retrieving data in any form or medium) and their employees and
19 subcontractors.

20 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
21 "CONFIDENTIAL."

22 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected Material
26 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
27 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
28 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

1 However, the protections conferred by this Stipulation and Order do not cover the following
 2 information: (a) any information that is in the public domain at the time of disclosure to a
 3 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
 4 a result of publication not involving a violation of this Order, including becoming part of the
 5 public record through trial or otherwise; and (b) any information known to the Receiving Party
 6 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
 7 obtained the information lawfully and under no obligation of confidentiality to the Designating
 8 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations imposed by
 11 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 12 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
 13 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
 14 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
 15 action, including the time limits for filing any motions or applications for extension of time
 16 pursuant to applicable law.

17 5. DESIGNATING PROTECTED MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 19 or Non-Party that designates information or items for protection under this Order must take care
 20 to limit any such designation to specific material that qualifies under the appropriate standards.
 21 The Designating Party must designate for protection only those parts of material, documents,
 22 items, or oral or written communications that qualify – so that other portions of the material,
 23 documents, items, or communications for which protection is not warranted are not swept
 24 unjustifiably within the ambit of this Order.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 26 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 27 unnecessarily encumber or retard the case development process or to impose unnecessary
 28 expenses and burdens on other parties) expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it designated
 2 for protection do not qualify for protection, that Designating Party must promptly notify all other
 3 Parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 5 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 7 designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (e.g., paper or electronic documents, but
 10 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 11 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a
 12 portion or portions of the material on a page qualifies for protection, the Producing Party also
 13 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 14 margins).

15 A Party or Non-Party that makes original documents or materials available for inspection
 16 need not designate them for protection until after the inspecting Party has indicated which
 17 material it would like copied and produced. During the inspection and before the designation, all
 18 of the material made available for inspection shall be deemed "CONFIDENTIAL." After the
 19 inspecting Party has identified the documents it wants copied and produced, the Producing Party
 20 must determine which documents, or portions thereof, qualify for protection under this Order.
 21 Then, before producing the specified documents, the Producing Party must affix the
 22 "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or
 23 portions of the material on a page qualifies for protection, the Producing Party also must clearly
 24 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

25 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
 26 the Designating Party identify on the record, before the close of the deposition, hearing, or other
 27 proceeding, all protected testimony.

28 (c) for information produced in some form other than documentary and for any

1 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 2 container or containers in which the information or item is stored the legend
 3 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
 4 the Producing Party, to the extent practicable, shall identify the protected portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 6 designate qualified information or items does not, standing alone, waive the Designating Party's
 7 right to secure protection under this Order for such material. Upon timely correction of a
 8 designation, the Receiving Party must make reasonable efforts to assure that the material is
 9 treated in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 12 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 14 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 15 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 16 original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
 18 process by providing written notice of each designation it is challenging and describing the basis
 19 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
 20 notice must recite that the challenge to confidentiality is being made in accordance with this
 21 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
 22 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
 23 forms of communication are not sufficient) within 14 days of the date of service of notice. In
 24 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
 25 designation was not proper and must give the Designating Party an opportunity to review the
 26 designated material, to reconsider the circumstances, and, if no change in designation is offered,
 27 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
 28 stage of the challenge process only if it has engaged in this meet and confer process first or

1 establishes that the Designating Party is unwilling to participate in the meet and confer process in
 2 a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 4 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
 5 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
 6 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
 7 process will not resolve their dispute, whichever is earlier. Each such motion must be
 8 accompanied by a competent declaration affirming that the movant has complied with the meet
 9 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
 10 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
 11 shall automatically waive the confidentiality designation for each challenged designation. In
 12 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
 13 time if there is good cause for doing so, including a challenge to the designation of a deposition
 14 transcript or any portions thereof. Any motion brought pursuant to this provision must be
 15 accompanied by a competent declaration affirming that the movant has complied with the meet
 16 and confer requirements imposed by the preceding paragraph.

17 The burden of persuasion in any such challenge proceeding shall be on the Designating
 18 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 19 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 20 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 21 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 22 material in question the level of protection to which it is entitled under the Producing Party's
 23 designation until the court rules on the challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
 26 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 27 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
 28 to the categories of persons and under the conditions described in this Order. When the litigation

1 has been terminated, a Receiving Party must comply with the provisions of section 13 below
 2 (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 4 secure manner that ensures that access is limited to the persons authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 6 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 7 information or item designated “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
 9 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 10 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
 11 Bound” that is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees (including House Counsel) of the
 13 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
 14 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 16 reasonably necessary for this litigation and who have signed the “Acknowledgment and
 17 Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, mock
 20 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
 21 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is
 23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 24 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
 25 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
 26 separately bound by the court reporter and may not be disclosed to anyone except as permitted
 27 under this Stipulated Protective Order.

28 (g) the author or recipient of a document containing the information or a custodian

1 or other person who otherwise possessed or knew the information.

2 PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 3 LITIGATION

4 If a Party is served with a subpoena or a court order issued in other litigation that compels
 5 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party
 6 must:

- 7 (a) promptly notify in writing the Designating Party. Such notification shall
 include a copy of the subpoena or court order;
- 8 (b) promptly notify in writing the party who caused the subpoena or order to issue
 in the other litigation that some or all of the material covered by the subpoena or order is subject
 to this Protective Order. Such notification shall include a copy of this Stipulated Protective
 Order; and
- 13 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the
 15 subpoena or court order shall not produce any information designated in this action as
 16 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
 17 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
 18 shall bear the burden and expense of seeking protection in that court of its confidential material –
 19 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
 20 Party in this action to disobey a lawful directive from another court.

21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
 22 LITIGATION

23 (a) The terms of this Order are applicable to information produced by a Non-Party
 24 in this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties
 25 in connection with this litigation is protected by the remedies and relief provided by this Order.
 26 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
 27 additional protections.

28 (b) In the event that a Party is required, by a valid discovery request, to produce a

18 | 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

26 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

When a Producing Party gives notice to Receiving Parties that certain inadvertently

1 produced material is subject to a claim of privilege or other protection, the obligations of the
 2 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
 3 provision is not intended to modify whatever procedure may be established in an e-discovery
 4 order that provides for production without prior privilege review. Pursuant to Federal Rule of
 5 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
 6 communication or information covered by the attorney-client privilege or work product
 7 protection, the parties may incorporate their agreement in the stipulated protective order
 8 submitted to the court.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 11 seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
 13 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 14 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
 15 no Party waives any right to object on any ground to use in evidence of any of the material
 16 covered by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the Designating Party
 18 or a court order secured after appropriate notice to all interested persons, a Party may not file in
 19 the public record in this action any Protected Material. A Party that seeks to file under seal any
 20 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
 21 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
 22 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
 23 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
 24 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
 25 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the
 26 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-
 27 5(e) unless otherwise instructed by the court.

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1 13. FINAL DISPOSITION

2 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 3 Receiving Party must return all Protected Material to the Producing Party or destroy such
 4 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
 5 compilations, summaries, and any other format reproducing or capturing any of the Protected
 6 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
 7 submit a written certification to the Producing Party (and, if not the same person or entity, to the
 8 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all
 9 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
 10 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
 11 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
 12 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
 13 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 14 product, and consultant and expert work product, even if such materials contain Protected
 15 Material. Any such archival copies that contain or constitute Protected Material remain subject to
 16 this Protective Order as set forth in Section 4 (DURATION).

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 Dated: October 10, 2014

LAW OFFICES OF PAMELA Y. PRICE

/s/ Pamela Y. Price

PAMELA Y. PRICE, Attorneys for Plaintiff
RENE PEINADO

21 Dated: October 10, 2014

OFFICE OF THE CITY ATTORNEY

/s/ Michael A. Georgiou
MICHAEL A. GEORGIOU, Deputy City Attorney
Counsel for Defendants CITY AND COUNTY OF
SAN FRANCISCO, ELIAS GEORGOPoulos

25 PURSUANT TO THE FOREGOING STIPULATION, IT IS SO ORDERED.

27 DATED: October 22, 2014



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States District Court for
7 the Northern District of California in the case of *Peinado v. City and County of San Francisco, et*
8 *al.*, Case No. C11-01799 EMC. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any manner any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
15 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

20 Date:

21 | City and State where sworn and signed:

22 Printed name: _____

23 | Signature: _____

CERTIFICATION

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Protective Order dated June 25, 2014, in *Peinado v. City and County of San Francisco*, Case No. C11-01799 EMC. I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information -- including copies, notes, or other transcriptions made therefrom -- in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information -- including copies, notes, or other transcriptions made therefrom -- to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of the United States District Court of the Northern District of California for the purpose of enforcing the Protective Order.

Dated: _____